

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In the Matter of:	)	NOTICE OF DETERMINATION
	)	
Federal Bureau of Prisons	)	
U.S. Department of Justice	)	
Respondent	)	Docket No. RCRA-03-2009-6037
	)	
Federal Correctional Institution Loretto	)	
Rural Route 276	)	
Loretto, Pennsylvania 15940	)	
Facility	)	

**NOTICE OF DETERMINATION**

Pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (Self-Disclosure Policy), the U.S. Environmental Protection Agency, Region III (EPA) hereby issues this Notice of Determination (NOD) regarding violations by Federal Correctional Institution Loretto (FCI Loretto), a facility owned and operated by the Federal Bureau of Prisons, U.S. Department of Justice, of Sections 113 and 608 of the Clean Air Act (CAA), 42 U.S.C. §§ 7413 and 7671g; Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a); the Pennsylvania Hazardous Waste Management Regulations (PaHWMR), 25 Pa. Code, Chapter 260a; and Section 311(j) of the Clean Water Act (CWA), 33 U.S.C. § 1321(j), at the FCI Loretto facility located in Loretto, Pennsylvania. The violations which are the subject of this NOD were voluntarily disclosed to EPA by FCI Loretto by report submitted to EPA on July 9, 2007. This report was submitted to EPA pursuant to the Facility Audit Agreement between the U.S. Department of Justice, Federal Bureau of Prisons (BOP), and EPA, dated March 24, 2007.

**I. SELF-DISCLOSURE POLICY**

EPA issued the Self-Disclosure Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an

incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties for certain self-disclosed violations, however, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies the following conditions, as set forth in the Self-Disclosure Policy, EPA will not seek gravity-based penalties for violations of the federal environmental requirements: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100 percent, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75 percent, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. In the report provided to EPA on July 9, 2007, FCI Loretto disclosed the violations listed below.

Violation 1: FCI Loretto violated 40 C.F.R. § 82.156(a) by using a recovery or recycling machine which was not properly certified in accordance with the provisions of 40 C.F.R. § 82.158.

Violation 2: FCI Loretto violated 25 Pa. Code § 266a.20, which incorporates by reference 40 C.F.R. § 266.70(c), by not maintaining the records to demonstrate that it was not accumulating silver at its facility speculatively.

Violation 3: FCI Loretto violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status while failing to satisfy the conditions of the "less than 180-day" generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, by the following actions:

- a) FCI Loretto stored hazardous waste in the water plant laboratory without marking the container with the words "hazardous waste."
- b) FCI Loretto stored hazardous waste in the construction shop. A 5-gallon gasoline safety can has a label which indicated it was "hazardous waste," but there was no accumulation start date indicated on the label.

- Violation 4: FCI Loretto violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(2), by failing to denote the accumulation start date on a container at the construction shop.
- Violation 5: FCI Loretto violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. 262.34(a)(3), by failing to label a container at the water plant laboratory as "hazardous waste."
- Violation 6: FCI Loretto violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13, by failing to properly manage universal waste lamps at the pole barn and the electric shop in accordance with the requirements of 40 C.F.R. § 273.13(d).
- Violation 7: FCI Loretto violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), by failing to adhere to the labeling and marking requirements for universal waste with respect to universal waste lamps at the pole barn and the electric shop.
- Violation 8: FCI Loretto violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15, by failing to demonstrate the length of time that universal waste lamps had accumulated at the pole barn and the electric shop.
- Violation 9: FCI Loretto violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13, by failing to properly manage universal waste batteries at the pole barn in accordance with the requirements of 40 C.F.R. § 273.13(a).
- Violation 10: FCI Loretto violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(a), by failing to adhere to the labeling and marking requirements for universal waste with respect to universal waste batteries at the pole barn.
- Violation 11: FCI Loretto violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15, by failing to demonstrate the length of time that universal waste batteries had accumulated at the pole barn and the electric shop.
- Violation 11: FCI Loretto was an "onshore facility" within the meaning of Section 311(a)(10) of

the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 and a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto, and 36 Fed. Reg. 24,080 (1971), engaged in storing or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110. FCI Loretto did not have a Spill Prevention, Control and Countermeasure (SPCC) Plan as required by 40 C.F.R. § 112.3.

2. Based on the information provided by FCI Loretto, EPA has determined that FCI Loretto has met each of the following conditions set forth in the Self-Disclosure Policy, as explained below.

(a) FCI Loretto has stated that the violations were discovered through an environmental audit which was part of FCI Loretto’s environmental management system.

(b) FCI Loretto has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed to EPA in writing by FCI Loretto.

(d) FCI Loretto has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, report by a “whistleblower” employee or imminent discovery by a regulatory agency.

(e) FCI Loretto has described the steps the facility has taken to correct the violations.

(f) FCI Loretto has stated that the potential violations are not repeat violations from any prior self-disclosure or enforcement action within the past three years.

(g) FCI Loretto has stated that the potential violations did not (1) result in serious actual harm, or present an imminent and substantial endangerment to human health or the environment, or (2) violate the specific terms of any judicial or administrative order or consent agreement.

(h) FCI Loretto has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to its disclosure.

### **III. DETERMINATION**

Pursuant to the Self-Disclosure Policy, and based on information provided by FCI Loretto, EPA makes the following determination concerning each of the violations identified

above:

1. FCI Loretto's failure to comply with the above listed regulations has resulted in violations of Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); the PaHWMR, 25 Pa. Code, Chapter 260a; and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), at the FCI Loretto facility located in Loretto, Pennsylvania.
2. The authority to seek civil penalties for the violations recited herein is found at Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).
3. Pursuant to the Debt Collection Improvement Act of 1996, (DCIA) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Penalty Inflation Rule), violations of Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671g, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which occurred subsequent to January 30, 1997, and through March 15, 2004, are subject to a statutory maximum penalty of \$27,500.00 for each day during which a violation occurred. Violations of the above-cited statutes which occurred after March 15, 2004, and through January 12, 2009, are subject to a statutory maximum penalty of \$32,500 for each day during which a violation occurs.
4. EPA has calculated the gravity-based penalty for the disclosed violations based upon the *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, including *Appendix X, Clean Air Act Civil Penalty Policy for violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances containing Refrigerant*, dated June 1, 1994, and the *RCRA Civil Penalty Policy*, dated June 2003, and in light of the information available to EPA at this time, the total gravity-based civil penalty for the disclosed violations described herein would be seventy two thousand three hundred sixty two dollars (\$72,362.00).
5. Based upon the information provided by FCI Loretto and EPA's consideration of the aforementioned policy, FCI Loretto has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100 percent reduction in the gravity-based component of the civil penalty for the disclosed violations. No significant economic benefit of non-compliance has accrued to FCI Loretto concerning the violations described herein. Therefore, EPA will not assess a gravity-based civil penalty against FCI Loretto concerning the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of noncompliance which has accrued to FCI Loretto.

#### **IV. RESERVATION OF RIGHTS**

1. This NOD resolves only the potential claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g),


for the violations alleged herein and as specifically described in the report submitted on behalf of FCI Loretto on July 9, 2007. Nothing in this NOD is intended, nor shall be construed, to operate in any way to resolve criminal liability, if any, of FCI Loretto. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of all federal environmental law.

2. This NOD shall not relieve FCI Loretto of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of the CAA, RCRA, and CWA, or any regulations promulgated thereunder.
3. EPA reserves the right to undertake any action against any person, including FCI Loretto, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
4. EPA reserves the right to revoke this NOD and thereby, render such Notice of Determination null and void if and to the extent that any information or certification provided by FCI Loretto, upon which any civil penalty mitigation granted herein for such violation was based was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by FCI Loretto.

In issuing this NOD, EPA seeks to promote self-auditing by FCI Loretto and expects FCI Loretto to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the  
U.S. Environmental Protection Agency, Region III**

**Date:** 9.16.09

**By:**   
John Armstead, Acting Director  
Office of Enforcement, Compliance and  
Environmental Justice